

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 15, 2005

Cherie R. Kiser, Esq.
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701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: Telco Group, Inc.
FY 2004 Regulatory Fee Waiver Request
Fee Control No. 0408208365118005

Dear Counsel:

This is in response to your request dated September 27, 2004, for a waiver of the regulatory fees for Fiscal Year (FY) 2004, filed on behalf of Telco Group, Inc. (Telco) on the grounds of financial hardship. Our records reflect that Telco paid the \$933,352.11 FY 2004 regulatory fee.

You assert that payment of the regulatory fees would cause Telco significant financial hardship and that it "cannot pay these fees if it is to continue as an ongoing U.S. business." You contend that in paying the FY 2004 regulatory fees, Telco "has rendered itself severely short of cash to pay current liabilities due." You aver that if Telco's waiver request is not granted, "it will not be able to continue as a United States company." In support, you submit a document entitled "Telco Group, Inc. Combined Statements of Operations (Unaudited)," which provides income data for 2003 and the first six months of 2004 (*Statement of Income*). In a subsequent communication, you provide the Internal Revenue Service 2004 Wage and Tax Statement (Form W-2) for Samer Tawfik, who you state is the one hundred percent shareholder of Telco and holder of "all the general corporate officer titles (CEO, President, Treasurer, Secretary, Director, Chairman) [of Telco]."

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are


considered funds available to pay the fees. The Commission imposes a cap of \$500,000.00 on waivers for regulatees asserting bankruptcy or otherwise claiming financial hardship.¹


Our review of the record, including Telco's *Statement of Income* as it reflects Telco's income for the most recent period from January 1, 2004 through June 30, 2004, and Mr. Tawfik's Form W-2 for 2004, indicates that Telco suffered a financial loss in that six-month time period which was only partially offset by depreciation and compensation paid to its one principal and officer, Mr. Tawfik. Given that Telco suffered a financial loss in the six-month time period from January 1, 2004 through June 30, 2004, we grant Telco a partial waiver of the regulatory fees for FY 2004 in the amount of \$500,000.00, as limited by the Commission's waiver cap.²

You have also requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fee is received, you will be notified and afforded the opportunity to respond at that time.

A check made payable to the maker of the original check, and drawn in the amount of \$500,000.00, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order* 18 FCC Rcd 15985, 15990 (2003) (stating that in computing the cap, the Commission "will aggregate all subsidiaries and other affiliated entities of a particular regulatee[, and] . . . will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date.").

² Because we grant Telco's request for waiver of the regulatory fees based on financial hardship, the additional grounds you raise in support of the waiver request are moot.